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SUPREME COURT OF THE UNITED STATES

PETITION for CERTIORARI

BY

DR. LOYD C. YEARGIN, Petitioner

vs.

HAMILTON MEMORIAL HOSPITAL, DALTON-WHITFIELD COUNTY HOSPITAL AUTHORITY, DR. ELI A. ROSEN, DR. NEIL D. BOGGESS, JR., DR. MARION VICTOR DARDIN, DR. ROYAL T. FARROW, DR. MURRAY B. LUMPKIN, DR. DAVID M. NOWELL, DR. JAMES J. OOSTERHOUNDT, DR. DRAYTON SANDERS, DR. SIDNEY L. SELLERS, DR. W. RONALD TIPTON, DR. DAVID A. WELLS, MR. JACK BANDY, MR. J. EDGAR BROOKER, MR. CARL GRIGGS, MR. DAVID HAMILTON, MR. J. EDD KING, MR. E. DEAN SMITH, and MR. JACK P. TURNER,

Appellees.

from

SUPREME COURT OF THE STATE OF GEORGIA

in Its Case No. 25,421.

H Garland Head III
Roswell, Ga

HUGH G. HEAD, JR.
1203 Healey Building
Atlanta, Georgia 30303
Attorney for Petitioner

TO THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

PETITION FOR CERTIORARI

This is a petition to the Supreme Court of the United States for a writ of certiorari to the Supreme Court of the State of Georgia to submit for review and reversal here the opinion and decision of the Supreme Court of the State of Georgia entered November 6, 1969, in its Case Number 25,421, entitled DR. LOYD C. YEARGIN, APPELLANT, VERSUS HAMILTON MEMORIAL HOSPITAL, DALTON-WHITFIELD COUNTY HOSPITAL AUTHORITY, DR. ELI A. ROSEN, DR. NEIL D. BOGGESS, JR., DR. MARION VICTOR DARDIN, DR. ROYAL T. FARROW, DR. MURRAY B. LUMPKIN, DR. DAVID M. NOWELL, DR. JAMES J. OOSTERHOUNDT, DR. DRAYTON SANDERS, DR. SIDNEY L. SELLERS, DR. W. RONALD TIPTON, DR. DAVID A. WELLS, MR. JACK BANDY, MR. J. EDGAR BROOKER, MR. CARL GRIGGS, MR. DAVID HAMILTON, MR. J. EDD KING, MR. E. DEAN SMITH, and MR. JACK P. TURNER, APPELLEES.

The opinion of the Georgia Supreme Court is officially reported in 225 Georgia Supreme Court Reports page 661, 1969. It appears here as an appendix, in accordance with Rule 39.

The decision of the Supreme Court of the State of Georgia hereby appealed from was rendered November 6, 1969, denying Appellant YEARGIN's MOTION FOR REHEARING of the opinion entered October 1, 1969. That opinion affirmed the decision of the trial Court, the Superior Court of Whitfield County, Georgia.

Jurisdiction of this Court to review this cause is believed to exist in United States Code Title 28 Sections 1254 and 2103 and 1257 (State court review).

GROUNDS (Rule 23 1(b))

The grounds of this appeal by certiorari are that the Supreme Court of the State of Georgia erred, thereby depriving Appellant YEARGIN of his civil rights and denying him due process of law and the equal protection of the Constitution of the United States, all as set out in the appended appeal and record in the Georgia Supreme Court. Succinctly stated, the issues are these:

(1) HAMILTON MEMORIAL HOSPITAL, Dalton, Whitfield County, Georgia, and the public State-created Authority which operates that Hospital, denied Appellant YEARGIN the right to operate in or use the facilities of HAMILTON MEMORIAL HOSPITAL. Appellant YEARGIN is a duly licensed practicing medical physician who has been practicing medicine and surgery, duly licensed by the State of Georgia (under code sections and laws fully set out in the appended appeal record), to practice medicine and surgery in all its forms, since 1951.

(2) Appellant physician YEARGIN is competent, has an unblemished record of excellent performance, and no complaint appears against him, but because he insisted upon his lawful right to perform whatever surgical or other medical procedures he felt himself qualified to do in that public facility, HAMILTON MEMORIAL HOSPITAL (a Hill-Burton public tax-supported facility), Defendants and Appellees refused Apellant YEARGIN the entire use of the said public hospital facilities.

(3) Appellant contends that his civil rights afforded by the U. S. Constitution and the Acts of Congress, and also by the laws and statutes of the State of Georgia (all as detailed in the appended record here), have been violated. Appellant is denied by the decision of the Georgia Courts (trial and Supreme), his property rights as well as his civil rights.

(4) One question of prime and overriding public importance pervades this case, and that is, shall the right of the public, meaning the rights of patients, to select their own

physician and to use and have their physician use the public tax-supported hospital facilities in treating individual patients as their selected physician adjudges and decides they should be treated, shall that right be curtailed by the Appellants?

In short, when the statute laws in force without impairment in Georgia for nearly half a century specify that a licensed medical physician and surgeon may not be further examined but may practice medicine and surgery in all its branches, then do other physicians, hospitals, and courts have power, without violating the Constitution and laws, to exercise control so as to specify what such doctor can and what he cannot do?

Those are the questions in this case, and all the issues are covered by the pleadings, record and laws and decisions contained in this case's record, which will be filed if certiorari is granted.

Respectfully
(Hugh G. Head, Jr.)
HUGH G. HEAD, JR.,
Appellant's Attorney at Law
1203 Healey Building
Atlanta, Georgia 30303

H. Garland Head, III.

HUGH G. HEAD, JR.
Attorney at Law
1203 Healey Building
MUrray 8-3296
ATLANTA, GEORGIA 30303

January 13, 1970

ORDER OF RECORD AND
NOTICE OF CERTIORARI

Hon. Henry H. Cobb, Clerk of
The Supreme Court of Georgia,
Judicial Building,
Capitol Square South,
Atlanta, Georgia 30303

In re: DR. LOYD C. YEARGIN, Appellant vs. HAMILTON MEMORIAL HOSPITAL, DALTON-WHITFIELD COUNTY HOSPITAL AUTHORITY, et al., Supreme Court of Georgia Case No. 25421

Dear Mr. Cobb:

Confirming our earlier conversations, please take this as notice of appeal to the United States Supreme Court, Washington, D.C., by Dr. Loyd C. Yeargin from the order of the Georgia Supreme Court in Court's decision of November 6, 1969, denying Appellant's Motion for Rehearing in Case No. 25421, as above, this appeal to be by certiorari under Rule 23 and others.

Pursuant to Rule 12 of the Supreme Court Rules, Title 28, United States Code §2071 et seq., you are hereby respectfully requested to certify the record, the entire record in this case and to provide for its transmission to the Supreme Court of the United States, Washington, D.C.

This appeal by certiorari is taken pursuant to United States Code Title 28 Section 1257 (3), Appellant YEARGIN contends his civil rights have been violated, that he has been denied due process of law in violation of Amendment 14 of the U.S. Constitution, and that his property right to practice medicine and surgery has been denied him contrary to the U.S. Constitution. The question on which this case turns is whether a tax-supported Hill-Burton Hospital may deny a licensed Georgia physician and surgeon the right to its facilities.

Please prepare a transcript of the record in this cause for transmission to the U.S. Supreme Court, and include the entire record.

Respectfully,
(Hugh G. Head, Jr.)
Hugh G. Head, Jr.
Appellant's Attorney

HUGH G. HEAD, JR.
Attorney at Law
1203 Healey Building
MUrray 8-3296
ATLANTA, GEORGIA 30303

PROOF OF SERVICE

GEORGIA, FULTON COUNTY:

I, Hugh G. Head, Jr., Attorney for Appellant Dr. Loyd C. Yeargin in Case No. 25421 in the Supreme Court of the State of Georgia, against HAMILTON MEMORIAL HOSPITAL, and others, do hereby swear that on this day the 13th day of January, 1970, I served a copy of the foregoing Notice of Appeal by Certiorari to the Supreme Court of the United States on Hamilton Memorial Hospital, Appellee, and on all the other Appellees named in and parties to said action, by mailing a copy of the foregoing notice and request for the record to their Counsel of record, Hon. Trammell E. Vickery, Atlanta, Georgia,

and to Hon. H.E. Kinney and to Hon. John T. Minor, III, both of Dalton, Georgia, and by also delivering a copy to the law offices of Hon. Trammell E. Vickery, Haas-Howell Building, Atlanta, Georgia, Jan. 13, 1970:

(Hugh G. Head, Jr.)
Hugh G. Head, Jr.,
Appellant's Attorney

Sworn to and subscribed before me
this the 13 Jan. 1970:

[Signed] Mrs. Lewis M. Quigg
Notary Public, Georgia

APPENDIX

GEORGIA SUPREME COURT
FINAL DECISION

Nov. 6, 1969, with opinion Oct. 1, 1969

Supreme Court of Georgia Decided Oct. 1, 1969

25421. YEARGIN v. HAMILTON MEMORIAL HOSPITAL et al.

The court did not err in holding that the Hospital Authority was not required to grant a physician unlimited and unrestricted rights to serve as a member of the active staff of the hospital operated by the Authority and not required to allow him to use all of the privileges of active staff members according to the dictates of his own opinion and judgment. The Authority and hospital may restrict a staff member's privileges by reasonable and non-discriminatory rules and regulations.

Dr. Loyd C. Yeargin instituted an action in the Superior Court of Whitfield County against Hamilton Memorial Hospital, Dalton-Whitfield County Hospital Authority and various official members of the two above-named defendants and against each such individual, individually to recover damages and injunction for reasons stated in the petition. It is not necessary to set forth in detail the allegations since they become apparent from a discussion of the facts and discussion of them in the opinion. The same applies to the answers of the defendants. On an interlocutory hearing of the case the court, partially by agreement of the parties, rendered the following judgment: "The above case having come on to be heard pursuant to plaintiffs' prayers for temporary injunction and, after hearing evidence and arguments of counsel, it is ordered and adjudged that temporary restraining order issued herewith under date of May 16, 1969, be and the same is hereby vacated; it is further

ordered and adjudged that until further order of court the plaintiffs' prayers for temporary injunction be, and the same are hereby granted subject to the provisions hereof in the following particulars: (a) Defendant, Dalton-Whitfield County Hospital Authority, d/b/a Hamilton Memorial Hospital, its officers, agents, servants, employees, and all persons in active concert or participation with said defendant, are temporarily restrained and enjoined from denying the plaintiff, Dr. Loyd C. Yeargin, the right to admit patients to Hamilton Memorial Hospital; and are further restrained and enjoined from denying to plaintiff, Dr. Loyd C. Yeargin, the right to exercise with respect to any patients so admitted those medical staff privileges which were recommended for Dr. Yeargin by the Medical and Dental Staff of Hamilton Memorial Hospital in acting on the application of the said Dr. Loyd C. Yeargin for membership on the medical staff for the hospital's fiscal year 1968-1969. A copy of the privileges so recommended is attached hereto and made a part hereof. (b) Dr. Loyd C. Yeargin shall in connection with the exercise of medical staff privileges and in connection with the use of services or facilities of Hamilton Memorial Hospital abide by rules and regulations of the Dalton-Whitfield County Hospital Authority, d/b/a Hamilton Memorial Hospital, and rules and regulations of the Medical and Dental Staff of Hamilton Memorial Hospital which have been approved by defendant Authority; it is further ordered and adjudged that the remaining prayers of the plaintiff's application for temporary injunction be, and the same are hereby denied. Done and Ordered this 23rd day of May, 1969. [Signed] Robert L. Vining, Jr., Judge, Superior Court of Whitfield County, Conasauga Judicial Circuit." From this order the plaintiff appeals, enumerating the following errors: "1. The court erred in its order of May 23, 1969 (pages R25-29), in that: (1) It failed to restrain defendants from further interfering with plaintiff-appellant Yeargin's rights to the unrestricted practice in the hospital; and, (2) It restrained and limited plaintiff-appellant Yeargin's privileges as a physician and surgeon, contrary to law and to equity: and, (3) The court

acted upon the mistaken concept that it had power and defendants-appellees had power to restrict the professional judgment and physician's actions of plaintiff-appellant Yeargin, a duly licensed physician and surgeon."

Hugh G. Head, Jr., for Appellant.

Jones, Bird & Howell, Trammell E. Vickery, McCamy, Minor, Phillips & Tuggle, John T. Minor, III, Pittman & Kinney, H.E. Kinney, for Appellees.

FELTON, Justice. On September 20, 1968, the plaintiff applied for appointment to the active medical staff of the Hamilton Memorial Hospital of Dalton, Georgia, operated by the Dalton-Whitfield County Hospital Authority, a body corporate under the laws of Georgia. At the end of the application the following certification by the applicant was signed: "Certification by Applicant. 'As a part of this application for appointment, I further certify that I will abide by the by-laws, rules and regulations of the Dalton-Whitfield County Hospital Authority and the Medical Staff of Hamilton Memorial Hospital in effect at this time and as hereinafter amended. I further understand that this appointment, if granted, is for the period of one year only, or until the end of the fiscal year of Hamilton Memorial Hospital, whichever period occurs first. I understand that privileges granted me upon my initial appointment are provisional for a period of not less than one year.' This 12th day of June, 1968. [Signed] L. C. Yeargin, M.D." Attached to and forming a part of the application is a list of the privileges applicant requested. At the top of the page is the following statement: "All appointments and privileges granted become final upon approval by the Dalton-Whitfield County Hospital Authority. Procedures not specifically listed shall be categorized with procedures of similar magnitude on the decision of the chief of the department involved."

On December 30, 1968, Doctor Yeargin received the following letter from "Hamilton Memorial Hospital, By Norman

D. Burkett, Administrator": "Dear Doctor Yeargin: The governing body of Hamilton Memorial Hospital has approved your application for appointment to the Medical and Dental Staff of Hamilton Memorial Hospital for the fiscal year 1968-1969 and has accorded you those privileges which have been recommended by action of the Medical and Dental Staff and Joint Conference Committee and previously transmitted to you. Pursuant to the bylaws of the Medical and Dental Staff it is necessary that I secure your signature to the enclosed form evidencing your willingness to abide by the bylaws, rules and regulations of the Dalton-Whitfield County Hospital Authority and the Medical and Dental Staff of Hamilton Memorial Hospital. We respectfully call to your attention the requirement of the bylaws that the enclosed form be executed within one week." On January 6, 1969, Doctor Yeargin wrote the Hospital the following letter of acceptance of the appointment which was identical to the form sent to him by the Hospital Administrator, with the exception of the qualifying words in brackets in the Doctor's letter of acceptance: "[Except bylaws, rules and regulations, and action taken by the Medical staff and the Authority against the public interest, the laws of Georgia and the Constitution of the United States.]" Appellant continued to refuse to abide by the requirements of the hospital which resulted in his being denied all privileges.

In response to the above indicated response to the actions by the hospital authorities, Doctor Yeargin made no complaint that he had been approved for less categories than he requested or that the hospital had discriminated against him in denying him certain categories or denied him a hearing or right of appeal, or that the restricting rules were unreasonable. Neither did Doctor Yeargin request to be granted all categories, which seems inconsistent with his only contention in the case which is that he is entitled to a free hand in treating his patients in the hospital without any single restriction whatsoever. Because he was not granted this unqualified right he instituted this action. In his application he agreed to agree with the hospital's position, but we know of no rule which would prevent him

from changing his mind to his advantage. The contention of Doctor Yeargin is that there should be no restriction upon him by the State after a license is issued to him, not that the provisions by the various acts and authorized delegations of power are illegal.

Appellant plants his case upon Acts of the General Assembly codified in Ga. Code Ann. § 84-907 where it is provided that if an applicant for a medical license is found qualified by the State Board of Medical Examiners "he shall be eligible to receive a license . . . giving him *absolute authority* to practice medicine in this State." (Emphasis supplied). This contention has been repudiated by decisions of this court, the United States Supreme Court, and others.

It was stated in Hughes v. State Board of Examiners, 162 Ga. 246, 256 (134 SE 42): "With reference to the criticism directed against the Act that it would prevent a physician from the right to practice, though he might otherwise be qualified, and that it would deprive him of a valuable property right, it is said in 21 R. C. L. 352, II, 3, that 'The right to practice medicine is . . . a valuable property right, in which, under the Constitution and laws of the State, one is entitled to be protected and secure. On the other hand, the preservation of public health is one of the duties devolving on the State as the sovereign power, and the discharge of this duty is accomplished by means of the exercise of the inherent police power of the sovereign. Thus is presented a conflict between the right of a citizen to follow a profession, and the right of the State to protect the health and welfare of its citizens; but not a very serious conflict, because the outcome is always clear. Every citizen has the undoubted right to follow any lawful calling, business, or profession he may select, subject only to such restrictions as the government may impose for the welfare and safety of society. This right is one of the distinguishing features of republican institutions. Many of the occupations of life may be followed by persons, irrespective of fitness without danger to the public health, or any detriment to the general welfare;

others demand special knowledge, training, or experience; and the power of the State to prescribe such restrictions and regulations for those as, in its judgment, shall protect the people from the consequences of ignorance or incapacity, as well as deception and fraud, has never been questioned. This is especially true with respect to the practice of medicine. Nearly everyone, of necessity, consults the physician at some period of life, but few are able to judge his qualifications in point of learning and skill; and because of the importance of the interests committed to his care, involving health and life, it is perfectly clear that the State may interfere with the right of the individual and place restrictions and regulations on the practice of medicine. A statute regulating the right to practice medicine, but leaving the field open to all who possess the prescribed qualifications, does not abridge the privileges or immunities of citizens.' See Dent v. West Va., 129 U. S. 114 (9 SC, 231, 32 LE 623) and other cases cited." To the same effect see Hayman v. City of Galveston, 273 U. S. 414 (47 SC 363 71 LE 714; Hawker v. New York, 170 U. S. 189, 192 (18 SC 573, 42 LE 1002). In the case next above cited the court said: "In the management of a hospital, quite apart from its use for educational purposes, some choice in methods of treatment would seem inevitable, and a selection based upon a classification having some basis in the exercise of the judgment of the State board whose action is challenged is not a denial of the equal protection of the laws." For State decisions to the same effect, see 24 ALR 2d 850; 40 AmJur 2d 856, Hospitals and Asylums § 8.

The judgment rendered in this case is one which was suggested by the appellees as a gesture of unparalleled good will, fair play and cooperation. It was a literal "second mile" performance to insure the protection of the appellant and his patients until the final decision in the case. Whether this attitude will continue in view of our decision in this case is of course beyond our power to control, but we can at least hope that after the battle is over the spirit demonstrated above will pervade the peace conference. In saying this, the writer is speaking for himself alone.

Speaking for the court, the trial judge did not err in holding in accordance with the foregoing opinion.

Judgment affirmed. **All the Justices concur.**

SUPREME COURT OF GEORGIA

Atlanta, October 1, 1969

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Loyd C. Yeargin v. Hamilton Memorial Hospital et al.

This case came before this court upon an appeal from the Superior Court of Whitfield County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

BILL OF COSTS, $30.00

SUPREME COURT OF GEORGIA

Atlanta, November 6, 1969

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Loyd C. Yeargin v. Hamilton Memorial Hospital et al.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta,

January 15, 1970

I hereby certify that the foregoing pages consecutively numbered 1 through 16, hereto attached, contain a true and complete copy of the Georgia Supreme Court's opinion, judgment and order denying the motion for rehearing in Georgia Supreme Court Case No. 25,421, Yeargin v. Hamilton Memorial Hospital et al., as appears from the records and files of this office.

SEAL OF THE SUPREME COURT OF THE STATE OF GEORGIA

Witness my signature and the seal of the said Court hereto affixed the day and year above written.

[Signed] Henry H. Cobb

Clerk

ACKNOWLEDGMENT OF SERVICE

Service of the within and foregoing Petition for Certiorari by Dr. Loyd C. Yeargin versus Hamilton Memorial Hospital, et al., from Georgia Supreme Court case #25,421, to the United States Supreme Court, is hereby acknowledged, this 21 January, 1970.

Trammell E. Vickery,
As Attorney of Record for
Defendants